HIGH COURT OF UTTARANNCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 713 of 2006

Village Panchayat Ladpurkalan

Vs

State of Uttaranchal & others

Approved for reporting

Not approved for reporting

Date of decision : 14.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 713 (MS) OF 2006

Village Panchayat Ladpurkalan,
Tehsil-Laksar, District-Haridwar,
Through its Village Pradhan. .....Petitioner.

Vs.

1. State of Uttaranchal through Secretary Panchayat Raj Secretariat, Dehradun.
2. Collector Haridwar, District-Haridwar.
3. District Panchayat Raj Officer Haridwar, District-Haridwar. .....Respondents.

Dated: 14.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Lok Pal Singh, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 3. Both the parties have submitted that let the writ petition be decided at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 23.05.2006 (Annexure No. 8 to the writ petition) passed by the respondent no. 3.

Briefly stated, according to the case of the petitioner, Village Panchayat Ladpurkalan consists three villages namely Ladpurkalan, Ladpurkhurd and Mukhyalikhurd, District-Haridwar. Gaon Sabha Ladpurkalan is the owner of Khasra No. 59M total measuring 0.359 hectare situated in Village-Mukhyalikhurd, Tehsil-Laksar, District Haridwar. An assami patta was allotted in favour of one Sri Mahmood for an area of

0.216 hectare for a period of 5 years. Thereafter, the lease was not renewed by the Gaon Sabha and therefore, Sri Mahmood had no right to remain in possession over the land, which was allotted to him as asami patta.

However, a resolution was passed on 15th January, 2006 to construct the Panchayat Garhain Khasra No. 59m and the land measuring 0.143 hectare was earmarked for Panchayat Ghar.

The said resolution was approved by the Assistant Collector 1st Class Laksar on 7th April 2006 to the following effect:-

"अतः आदेश हुआ कि खसरा नं0 59 रकबई 0.143 हैक्टेयर स्थित ग्राम मखयाली खुर्द परगना मंगलौर को भूमि प्रबन्धक समिति लादपुर कलाँ द्वारा पारित प्रस्ताव दिनांक 15.01.2006 को तहसीलदार लक्सर की जाँच आख्या के आधार पर आपत्तिकर्ता महमूद की भूमि को छोड़ते हुये पंचायत घर हेतु सुरक्षित किया जाता है। पत्रावली वाद आवश्यक कार्यवाही दाखिल दफ्तर होवें।"

In pursuance of the aforesaid order, the petitioner started construction and while construction work was going on, demolition of walls was threatened, the petitioner, therefore, moved an application to the respondent no. 2 to intervene into the matter. The police force was made available to the petitioner. Petitioner has submitted that the name of Mahmood was also struck off by order dated 25.03.2006. The operative portion of the order is quoted below:-

"तहसील लक्सर की आख्या के आधार पर भूमि खं0सं0–59म, रकबा 0.216 हे0, ख0सं0–367, रकबा 0.064 हे0 स्थित मौजा खियाली खुर्द परगना मंगलौर तहसील लक्सर से खातेदार महमूद पुत्र शहीद नि0 –ग्राम के नाम की प्रविष्टि समाप्त की जाती है। तदानुसार अमलदरामद होवे।"

Petitioner has submitted that an order was passed on 23rd May, 2006 for stopping the construction of Panchayat Ghar. The order was passed to the following effect:-

"विषयः– गाम पंचायत लादपुर में पंचायत भवन निर्माण रूकवाने के संबंध में।

उपरोक्त विषयक समस्त ग्रामवासी ग्राम पंचायत लादपुर कला के प्रार्थन पत्र पर मा0 पंचायत राज मंत्री उत्तरांचल सरकार के आदेश दिनांक 22–5–2006 के क्रम में आपको सूचित किया जाता है कि ग्राम पंचायत लादपुर कला में जिस स्थल पर प्रधान द्वारा पंचायत भवन का निर्माण कराया जा रहा है, विवाद होने के फलस्वरूप उसे तत्काल प्रभाव से रोका जाता है। आप प्रधान ग्राम पंचायत भवन के निर्माण कार्य को रोकने हेतु आदेशित कर देवें तथा उसकी सूचना लौटती डाक से इस कार्यालय को देने का कष्ट करें, ताकि वस्तुस्थिति से मा0 मंत्री जी को अवगत कराया जा सके।"

The grievance of the petitioner is that the order was passed without affording any opportunity to the petitioner and once the land was earmarked for the Panchayat Garh, opportunity should have been afforded to the petitioner before passing the order stopping the constructions or to revoke the order dated 7th April, 2006.

Further grievance of the petitioner is that neither he has been given the order of Hon'ble Minister dated 22.05.2006, nor he was given any show cause notice before stopping the constructions. It appears that some order was passed by the Hon'ble Minister and the same was communicated to the District Panchayat Raj Adhikari alone, who passed the present order.

The order impugned, therefore, has a civil consequence as the earlier judicial order passed by the Assistant Collector by which the land was earmarked for Panchayat Garh dated 7th Aril, 2006 has been revoked.

In ***Basudeo Tiwari V. Sido Kanhu University and others 1998(6) SC –464,*** it has been held as:-

"The law is settled that non arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary that the audi alteram partem facet of natural justice is also a requirement of Article 14 for natural justice is the antithesis of arbitrariness.

In order to impose procedural regards, this Court has read the treatment of natural justice in many equations when the statute is silent on this point. The approach of this court in this regard omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing: "it may be applied from the nature of the power particularly when the right of the party is affected adversely. The justification for reading such a requirement is that the court merely supplies omission of the legislature. (Vide Mohinder Singh Gill and Others Vs. The Chief Election Commissioner and others AIR 1978 SC, 851) and except in case of direct legislative negation or applied exclusion (vide S.L. Kapoor Vs. Jagmohan & Other AIR 1981 SC 136).

In ***Menka Gandhi v. Union of India, (1978) 1 Supreme Court Cases page 248,*** the Apex Court held as under:-

> *" It is well established that even where there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power*

to take punitive or damaging action. This principal was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei in the following words:

The rule that a party to whose prejudice and order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance; thereof transcends the significance of a decision in any particular case.

In England, the rule was thus expressed by Byles, J. In Cooper v. Wandsworth Board of Works

The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?" And the same question was put to Eve also."

In view of the above, the order dated 23.05.2006 passed by the respondent no. 3 is quashed.

The matter is sent back to the Collector for passing fresh order after giving opportunity to the petitioner within a period of one month from the date of presentation of the certified copy of the order. However, for a period of one month only the order dated 23rd May, 2006 shall remain in abeyance subject to fresh order which may be passed by the Collector. However, the petitioner shall abide by the order passed by the respondent no. 2/Collector Haridwar, District Haridwar.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

14.06.2006
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